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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,302	01/20/2006	Akinori Sudoh	Q76805	7084
23373 7590 08/30/2010 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER BARROW, AMANDA J				
ART UNIT		PAPER NUMBER		
1795				
NOTIFICATION DATE		DELIVERY MODE		
08/30/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/565,302	Applicant(s) SUODO ET AL.
Examiner AMANDA BARROW	Art Unit 1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-9, 14, 17 and 30-34.

Claim(s) withdrawn from consideration: 18-29 and 35-45.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Dah-Wei D. Yuan/
Supervisory Patent Examiner, Art Unit 1795

/AMANDA BARROW/
Examiner, Art Unit 1795

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant is requesting that newly added claims 38-45 are entered and assert that they recite the subject matter of original claims 10-17 as claim 10 was accidentally canceled in the amendment after final and claims 11-17 depend directly or indirectly from claim 10.

The amendment will not be entered because the newly added claims recite subject matter that was never examined or searched by the Examiner. Newly added claims 39, 40, 41, 43, and 44 correspond to previously presented claims 11, 12, 13, 15, and 16, respectively, which were restricted out by the Examiner and withdrawn by the Applicant. As such, the claims have never been examined or searched and raise new issues that would require further consideration and search.

Applicant argues the rejection of claim 1 asserting that a) Parmentier discloses the porosity of the carbon fibers, not that of the electrode; b) Gernov is relied upon for providing the motivation to reduce the porosity to as low as possible but then Gernov specifies the range contemplated is 40-60%. Thus, Gernov's statement concerning "as low as possible" is correctly interpreted to be around 40%, not 25%; and c) there is not teaching, suggestion, motivation, or other reason to combine Gernov, Parmentier and Nishimura because the objectives of these references differ from each other.

In response:

a) Parmentier discloses an anode (negative electrode) formed by a carbon fiber substrate in which the total porosity of both the electrode and carbon fibers that constitute the electrode is in the range of 10 to 30% (column 3; line 65 through column 4, line 9; column 2, lines 44-46). The carbon fibers having a porosity in the range of 10 to 30% form a substrate (i.e. the electrode in the invention) formed by the continuous carbon fiber filaments. Thus, both the carbon fibers and the electrode substrate have an overall porosity in the range of 10 to 30% as the electrode substrate is made entirely of the continuous carbon fiber filaments having a porosity in the range of 10 to 30%.

b) Applicant correctly points out that Gernov discloses a range of 40-60% and not 25%; however, Gernov is not relied upon to disclose the range claimed as Parmentier is used to disclose this limitation. Instead, Gernov discloses that the porosity of the electrode is a known result effective variable and that one of ordinary skill in the art would be motivated to modify the porosity of an electrode to a low value in order to achieve a high volumetric density of the electroactive material resulting in a high energy density (column 2, lines 60-67).

c) All three references are drawn to the same field of endeavour, namely, secondary electrochemical cells with electrodes, and represent analogous, combinable prior art.